

6. (Amended) A method for the treatment of a patient afflicted with a bacterial infection comprising the administration to said patient of a therapeutically effective amount of a compound of any of claims [1-4] 1, 2, 3, or 4.

#### REMARKS

Reconsideration of this application in view of the above amendments and following remarks is respectfully requested. Claims 1-6 were pending. Claims 5 and 6 have been amended, and no claims have been added or deleted. Accordingly, claims 1-6 remain pending in this application.

In the Office Action dated December 22, 1998, claims 5 and 6 were objected to as being in improper form. Claims 5 and 6 have amended to refer to other claims in the alternative only. Accordingly, reconsideration and withdrawal of the objection are respectfully requested.

In the Office Action, claims 1, 3 and 6 stood rejected under 35 U.S.C. § 103(a) as being unpatentable in view of Gerard et al., "Loloatin B, A Cyclic Decapeptide Antibiotic Produced in Culture by a Tropical Marine Bacterium", Tetrahedron Letters, 37(40):7201-7204 (1996). This rejection is respectfully traversed because Gerard et al. is not "prior art" vis-a-vis the present application.

The present application claims priority to several provisional applications having a filing date of **July 26, 1996** (*see, e.g.*, Declaration and Power of Attorney executed by all named co-inventors, as filed on September 29, 1998 with the U.S. Patent and Trademark Office, Box PCT). However, Gerard et al. was not even accepted for publication by Tetrahedron Letters until **August 12, 1996** (see bottom of page 7204 of Gerard et al.) and therefore could not have been published before July 26, 1996. Since Gerard et al. was published after the priority date for the above-identified application, Gerard et al. does not constitute prior art vis-a-vis the present application, for purposes of 35 U.S.C. § 103(a). Since the Patent Office has not made out a *prima facie* case of obviousness for the claimed invention, reconsideration and withdrawal of the rejection are respectfully requested.


The Office Action has also taken the positions that (1) claims 1, 3, and 5-6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gerard et al. in view of

U.S. Patent 4,874,850 ("Paradies"); and (2) claims 1 and 4-6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gerard et al. in view of Paradies and in further view of U.S. Patent 5,545,618 ("Buckley et al.") and Dayhoff et al. ('Atlas of Protein Sequence and Structure 1972', Wash. D.C.: National Biomedical Research Foundation, Vol. 5, page 76).

Essentially, the Office Action takes the position that it would have been obvious (to one of ordinary skill in the art at the time of Applicants' invention) to exchange certain amino acids in the decapeptide of Gerard et al. in view of one or more of Paradies, Buckley and Dayhoff et al., to arrive at Applicants' claimed invention. These rejections are respectfully but strenuously traversed for the reason set forth above in connection with the rejection in view of Gerard et al. alone. That is, Gerard et al. does not constitute prior art to the claimed invention, and accordingly none of Paradies, Buckley et al. or Dayhoff et al. may properly be combined with Gerard et al. to find the presently claimed invention unpatentable. Accordingly, the Patent Office has failed to make out a *prima facie* case of obviousness for the claimed invention, and reconsideration and withdrawal of the rejections are respectfully requested.

In view of the above amendments and remarks, allowance of claims 1-6 is respectfully requested. A good faith effort has been made to place this application in condition for allowance. However, should any additional issue require attention prior to allowance, the Examiner is requested to contact the undersigned at (206) 622-4900 to resolve the matter.

Respectfully submitted,  
SEED and BERRY LLP



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